# IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

Don M. Hayes, Administrator of the Estate of Edward C. Hayes, et al.

Case No. 2:10-cv-0513

Plaintiffs,

:

v. : Judge Graham

Magistrate Judge Kemp

City of Columbus, et al.,

:

Defendants.

### ANSWER OF DEFENDANT CITY OF COLUMBUS AND FREDRICK HANNAH

Now come defendants City of Columbus and Fredrick Hannah, by and through counsel, and, in response to plaintiffs' complaint, state as follows:

- 1. Defendants admit that the deceased is Edward C. Hayes and that the complaint is brought by Don M. Hayes and Elaine V. Hayes, but deny all other assertions in ¶¶ 1 and 2 of the complaint for lack of knowledge sufficient to form a belief.
- 2. Defendants admit that the City of Columbus and Officer Hannah are named as defendants, and that plaintiffs assert their claim against Officer Hannah in his personal and official capacities and that the claims are brought pursuant to 42 U.S.C. ¶¶ 1983 and 1985.
- 3. Defendants admit that Officer Hannah was employed by the City of Columbus, and acting in accordance with policies and procedures as asserted in  $\P$  8 of the complaint.

- 4. Defendants admit ¶¶ 9 and 10 of the complaint.
- 5. Defendants admit ¶ 11 of the complaint.
- 6. Defendants admit that the Division engaged in a Summer Safety Initiative, but deny all other allegations in ¶¶ 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the complaint.
- 7. Defendants deny  $\P\P$  21 and 22 for lack of knowledge sufficient to form a belief.
  - 8. Defendants deny ¶¶ 23, 24, 25, 26, 27, 28, 29 and 30 of the complaint.
  - 9. Defendants deny ¶ 31 for lack of knowledge sufficient to form a belief.
  - 10. Defendants deny ¶¶ 32, 33 and 34 of the complaint.
  - 11. Defendants admit that Officer Hannah was acting under the code of law.
  - 12. Defendants deny ¶¶ 36, 37, 38, 39, 40, 41 and 42 of the complaint.
- 13. Defendants deny all other assertions in the complaint not previously admitted as true.

#### FIRST AFFIRMATIVE DEFENSE

14. Plaintiffs fail to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

15. Defendants are entitled to the immunities, defenses and setoffs provided for in R. C. Chapter 2744.

## THIRD AFFIRMATIVE DEFENSE

16. Defendant Hannah, at all times, acted in good faith and was not in violation of any clearly established law or regulation and is entitled to qualified immunity.

WHEREFORE, having fully answered plaintiff's complaint, defendants respectfully request dismissal of same at plaintiffs' cost.

Respectfully submitted,

# CITY OF COLUMBUS, DEPARTMENT OF LAW RICHARD C. PFEIFFER, JR., CITY ATTORNEY

/s/ Timothy J. Mangan

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Attorney for Defendants Fredrick Hannah and
City of Columbus

# **CERTIFICATE OF SERVICE**

This will certify that a copy of the foregoing was sent via First Class U.S. Mail, postage prepaid, to W. Jeffrey Moore, MOORE YAKLEVICH & MAUGER, 326 South High Street, Suite 300, Columbus, Ohio 43215 this 28<sup>th</sup> day of July 2010.

/s/ Timothy J. Mangan
Timothy J. Mangan
Assistant City Attorney

TJM/lk